

110TH CONGRESS
1ST SESSION

S. 465

To amend titles XVIII and XIX of the Social Security Act and title III of the Public Health Service Act to improve access to information about individuals' health care options and legal rights for care near the end of life, to promote advance care planning and decisionmaking so that individuals' wishes are known should they become unable to speak for themselves, to engage health care providers in disseminating information about and assisting in the preparation of advance directives, which include living wills and durable powers of attorney for health care, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2007

Mr. NELSON of Florida (for himself, Mr. LUGAR, Mr. ROCKEFELLER, Ms. COLLINS, Mr. DURBIN, and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XVIII and XIX of the Social Security Act and title III of the Public Health Service Act to improve access to information about individuals' health care options and legal rights for care near the end of life, to promote advance care planning and decisionmaking so that individuals' wishes are known should they become unable to speak for themselves, to engage health care providers in disseminating information about and assisting in the preparation of advance directives, which include living wills and durable powers of attorney for health care, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Advance Directives Im-
 5 provement and Education Act of 2007”.

6 **SEC. 2. ADVANCE DIRECTIVES.**

7 (a) FINDINGS.—Congress makes the following find-
 8 ings:

9 (1) Every year 2,500,000 people die in the
 10 United States. Eighty percent of those people die in
 11 institutions such as hospitals, nursing homes, and
 12 other facilities. Chronic illnesses, such as cancer and
 13 heart disease, account for 2 out of every 3 deaths.

14 (2) In 1997, the Supreme Court of the United
 15 States, in its decisions in *Washington v. Glucksberg*
 16 and *Vacco v. Quill*, reaffirmed the constitutional
 17 right of competent adults to refuse unwanted med-
 18 ical treatment. In those cases, the Court stressed the
 19 use of advance directives as a means of safeguarding
 20 that right should those adults become incapable of
 21 deciding for themselves.

22 (3) A survey published in 2005 estimated that
 23 the overall prevalence of advance directives is 29
 24 percent of the general population, despite the pas-
 25 sage of the Patient Self-Determination Act in 1990,

1 which requires that health care providers tell pa-
 2 tients about advance directives.

3 (4) Competent adults should complete advance
 4 care plans stipulating their health care decisions in
 5 the event that they become unable to speak for
 6 themselves. Through the execution of advance direc-
 7 tives, including living wills and durable powers of at-
 8 torney for health care according to the laws of the
 9 State in which they reside, individuals can protect
 10 their right to express their wishes and have them re-
 11 spected.

12 (b) PURPOSES.—The purposes of this section are to
 13 improve access to information about individuals' health
 14 care options and legal rights for care near the end of life,
 15 to promote advance care planning and decisionmaking so
 16 that individuals' wishes are known should they become un-
 17 able to speak for themselves, to engage health care pro-
 18 viders in disseminating information about and assisting in
 19 the preparation of advance directives, which include living
 20 wills and durable powers of attorney for health care, and
 21 for other purposes.

22 (c) MEDICARE COVERAGE OF END-OF-LIFE PLAN-
 23 NING AND CONSULTATIONS AS PART OF INITIAL PREVEN-
 24 TIVE PHYSICAL EXAMINATION.—

1 (1) IN GENERAL.—Section 1861(ww) of the So-
 2 cial Security Act (42 U.S.C. 1395x(ww)) is amend-
 3 ed—

4 (A) in paragraph (1), by striking “para-
 5 graph (2),” and inserting “paragraph (2) and
 6 an end-of-life planning consultation (as defined
 7 in paragraph (3)),”; and

8 (B) by adding at the end the following new
 9 paragraph:

10 “(3) For purposes of paragraph (1), the term ‘end-
 11 of-life planning consultation’ means a consultation be-
 12 tween the physician and an individual regarding—

13 “(A) the importance of preparing advance di-
 14 rectives in case an injury or illness causes the indi-
 15 vidual to be unable to make health care decisions;

16 “(B) the situations in which an advance direc-
 17 tive is likely to be relied upon;

18 “(C) the reasons that the development of a
 19 comprehensive end-of-life plan is beneficial and the
 20 reasons that such a plan should be updated periodi-
 21 cally as the health of the individual changes;

22 “(D) the identification of resources that an in-
 23 dividual may use to determine the requirements of
 24 the State in which such individual resides so that
 25 the treatment wishes of that individual will be car-

ried out if the individual is unable to communicate those wishes, including requirements regarding the designation of a surrogate decision maker (health care proxy); and

“(E) whether or not the physician is willing to follow the individual’s wishes as expressed in an advance directive.”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to initial preventive physical examinations provided on or after January 1, 2008.

(d) IMPROVEMENT OF POLICIES RELATED TO THE USE AND PORTABILITY OF ADVANCE DIRECTIVES.—

(1) MEDICARE.—Section 1866(f) of the Social Security Act (42 U.S.C. 1395cc(f)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (B), by inserting “and if presented by the individual (or on behalf of the individual), to include the content of such advance directive in a prominent part of such record” before the semicolon at the end;

(ii) in subparagraph (D), by striking “and” after the semicolon at the end;

1 (iii) in subparagraph (E), by striking
 2 the period at the end and inserting “;
 3 and”; and

4 (iv) by inserting after subparagraph
 5 (E) the following new subparagraph:

6 “(F) to provide each individual with the oppor-
 7 tunity to discuss issues relating to the information
 8 provided to that individual pursuant to subpara-
 9 graph (A) with an appropriately trained profes-
 10 sional.”;

11 (B) in paragraph (3), by striking “a writ-
 12 ten” and inserting “an”; and

13 (C) by adding at the end the following new
 14 paragraph:

15 “(5)(A) In addition to the requirements of paragraph
 16 (1), a provider of services, Medicare Advantage organiza-
 17 tion, or prepaid or eligible organization (as the case may
 18 be) shall give effect to an advance directive executed out-
 19 side the State in which such directive is presented, even
 20 one that does not appear to meet the formalities of execu-
 21 tion, form, or language required by the State in which it
 22 is presented to the same extent as such provider or organi-
 23 zation would give effect to an advance directive that meets
 24 such requirements, except that a provider or organization
 25 may decline to honor such a directive if the provider or

1 organization can reasonably demonstrate that it is not an
 2 authentic expression of the individual’s wishes concerning
 3 his or her health care. Nothing in this paragraph shall
 4 be construed to authorize the administration of medical
 5 treatment otherwise prohibited by the laws of the State
 6 in which the directive is presented.

7 “(B) The provisions of this paragraph shall preempt
 8 any State law to the extent such law is inconsistent with
 9 such provisions. The provisions of this paragraph shall not
 10 preempt any State law that provides for greater port-
 11 ability, more deference to a patient’s wishes, or more lati-
 12 tude in determining a patient’s wishes.”.

13 (2) MEDICAID.—Section 1902(w) of the Social
 14 Security Act (42 U.S.C. 1396a(w)) is amended—

15 (A) in paragraph (1)—

16 (i) in subparagraph (B)—

17 (I) by striking “in the individ-
 18 ual’s medical record” and inserting
 19 “in a prominent part of the individ-
 20 ual’s current medical record”; and

21 (II) by inserting “and if pre-
 22 sented by the individual (or on behalf
 23 of the individual), to include the con-
 24 tent of such advance directive in a

1 prominent part of such record” before
2 the semicolon at the end;

3 (ii) in subparagraph (D), by striking
4 “and” after the semicolon at the end;

5 (iii) in subparagraph (E), by striking
6 the period at the end and inserting “;
7 and”; and

8 (iv) by inserting after subparagraph
9 (E) the following new subparagraph:

10 “(F) to provide each individual with the oppor-
11 tunity to discuss issues relating to the information
12 provided to that individual pursuant to subpara-
13 graph (A) with an appropriately trained profes-
14 sional.”;

15 (B) in paragraph (4), by striking “a writ-
16 ten” and inserting “an”; and

17 (C) by adding at the end the following
18 paragraph:

19 “(6)(A) In addition to the requirements of paragraph
20 (1), a provider or organization (as the case may be) shall
21 give effect to an advance directive executed outside the
22 State in which such directive is presented, even one that
23 does not appear to meet the formalities of execution, form,
24 or language required by the State in which it is presented
25 to the same extent as such provider or organization would

1 give effect to an advance directive that meets such require-
 2 ments, except that a provider or organization may decline
 3 to honor such a directive if the provider or organization
 4 can reasonably demonstrate that it is not an authentic ex-
 5 pression of the individual's wishes concerning his or her
 6 health care. Nothing in this paragraph shall be construed
 7 to authorize the administration of medical treatment oth-
 8 erwise prohibited by the laws of the State in which the
 9 directive is presented.

10 “(B) The provisions of this paragraph shall preempt
 11 any State law to the extent such law is inconsistent with
 12 such provisions. The provisions of this paragraph shall not
 13 preempt any State law that provides for greater port-
 14 ability, more deference to a patient's wishes, or more lati-
 15 tude in determining a patient's wishes.”.

16 (3) EFFECTIVE DATES.—

17 (A) IN GENERAL.—Subject to subpara-
 18 graph (B), the amendments made by para-
 19 graphs (1) and (2) shall apply to provider
 20 agreements and contracts entered into, re-
 21 newed, or extended under title XVIII of the So-
 22 cial Security Act (42 U.S.C. 1395 et seq.), and
 23 to State plans under title XIX of such Act (42
 24 U.S.C. 1396 et seq.), on or after such date as
 25 the Secretary of Health and Human Services

1 specifies, but in no case may such date be later
 2 than 1 year after the date of enactment of this
 3 Act.

4 (B) EXTENSION OF EFFECTIVE DATE FOR
 5 STATE LAW AMENDMENT.—In the case of a
 6 State plan under title XIX of the Social Secu-
 7 rity Act (42 U.S.C. 1396 et seq.) which the
 8 Secretary of Health and Human Services deter-
 9 mines requires State legislation in order for the
 10 plan to meet the additional requirements im-
 11 posed by the amendments made by paragraph
 12 (2), the State plan shall not be regarded as fail-
 13 ing to comply with the requirements of such
 14 title solely on the basis of its failure to meet
 15 these additional requirements before the first
 16 day of the first calendar quarter beginning after
 17 the close of the first regular session of the
 18 State legislature that begins after the date of
 19 enactment of this Act. For purposes of the pre-
 20 vious sentence, in the case of a State that has
 21 a 2-year legislative session, each year of the ses-
 22 sion is considered to be a separate regular ses-
 23 sion of the State legislature.

24 (e) INCREASING AWARENESS OF THE IMPORTANCE
 25 OF END-OF-LIFE PLANNING.—Title III of the Public

1 Health Service Act (42 U.S.C. 241 et seq.) is amended
 2 by adding at the end the following new part:

3 **“PART R—PROGRAMS TO INCREASE AWARENESS**
 4 **OF ADVANCE DIRECTIVE PLANNING ISSUES**

5 **“SEC. 399Z-1. ADVANCE DIRECTIVE EDUCATION CAM-**
 6 **PAIGNS AND INFORMATION CLEARING-**
 7 **HOUSES.**

8 “(a) ADVANCE DIRECTIVE EDUCATION CAMPAIGN.—
 9 The Secretary shall, directly or through grants awarded
 10 under subsection (c), conduct a national public education
 11 campaign—

12 “(1) to raise public awareness of the impor-
 13 tance of planning for care near the end of life;

14 “(2) to improve the public’s understanding of
 15 the various situations in which individuals may find
 16 themselves if they become unable to express their
 17 health care wishes;

18 “(3) to explain the need for readily available
 19 legal documents that express an individual’s wishes,
 20 through advance directives (including living wills,
 21 comfort care orders, and durable powers of attorney
 22 for health care); and

23 “(4) to educate the public about the availability
 24 of hospice care and palliative care.

1 “(b) INFORMATION CLEARINGHOUSE.—The Sec-
 2 retary, directly or through grants awarded under sub-
 3 section (c), shall provide for the establishment of a na-
 4 tional, toll-free, information clearinghouse as well as clear-
 5 inghouses that the public may access to find out about
 6 State-specific information regarding advance directive and
 7 end-of-life decisions.

8 “(c) GRANTS.—

9 “(1) IN GENERAL.—The Secretary shall use at
 10 least 60 percent of the funds appropriated under
 11 subsection (d) for the purpose of awarding grants to
 12 public or nonprofit private entities (including States
 13 or political subdivisions of a State), or a consortium
 14 of any of such entities, for the purpose of conducting
 15 education campaigns under subsection (a) and estab-
 16 lishing information clearinghouses under subsection
 17 (b).

18 “(2) PERIOD.—Any grant awarded under para-
 19 graph (1) shall be for a period of 3 years.

20 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
 21 are authorized to be appropriated to carry out this section
 22 \$25,000,000.”.

23 (f) GAO STUDY AND REPORT ON ESTABLISHMENT
 24 OF NATIONAL ADVANCE DIRECTIVE REGISTRY.—

1 (1) STUDY.—The Comptroller General of the
2 United States shall conduct a study on the feasi-
3 bility of a national registry for advance directives,
4 taking into consideration the constraints created by
5 the privacy provisions enacted as a result of the
6 Health Insurance Portability and Accountability Act
7 of 1996 (Public Law 104–191).

8 (2) REPORT.—Not later than 18 months after
9 the date of enactment of this Act, the Comptroller
10 General of the United States shall submit to Con-
11 gress a report on the study conducted under para-
12 graph (1) together with recommendations for such
13 legislation and administrative action as the Comp-
14 troller General of the United States determines to be
15 appropriate.

16 (g) EFFECTIVE DATE.—Except as provided in sub-
17 sections (c) and (d), this section and the amendments
18 made by this section shall take effect on the date of enact-
19 ment of this Act.

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